



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL

CENTRAL MASSACHUSETTS DIVISION  
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May 18, 2021

Cathryn J. Kato, Town Clerk  
Town of Wellesley  
525 Washington Street  
Wellesley, MA 02482

**RE: Wellesley Special Town Meeting of October 26, 2020 - Case # 9970**  
**Warrant Articles # 15, 16, 17, 18, 19, 20, 21, and 22 (Zoning)**  
**Warrant Articles # 23, 25, and 28 (General)**  
**Warrant Article # 14 (Historic)**

Dear Ms. Kato:

**Article 28** - Under Article 28 the Town voted to prohibit the sale of fur products in the Town. As explained in more detail below, we approve Article 28 because we conclude that it is not in conflict with state law, including G.L. c. 94, § 277A, c. 131, § 28, and c. 266, § 79. See Amherst v. Attorney General, 398 Mass. 793, 795-96 (1986) (requiring inconsistency with state law or the constitution for the Attorney General to disapprove a by-law). In this decision, we summarize the by-law amendment adopted under Article 28 and the Attorney General's standard of review of town by-laws, and then explain why, based on our standard of review, we approve Article 28.<sup>1</sup>

During our review of Article 28, we received input urging our Office to disapprove Article 28 because it is in conflict with G.L. c. 94, § 227A.<sup>2</sup> We also received input urging our Office to approve Article 28 because it is consistent with the state's laws regulating fur sales, including G.L. c. 94, § 227A, c. 131, § 28, and c. 266, § 79.<sup>3</sup> This input has informed our review of the by-law and emphasized the importance of the issues at stake. As explained in more detail below, based on our standard of review and the Town's authority under the Home Rule Amendment and

<sup>1</sup> In a decision dated February 9, 2021 this Office approved Articles 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 25 and placed Article 28 on a 90-day extension.

<sup>2</sup> We appreciate the letter we received opposing Article 28 from Attorneys Laurence J. Lasoff and Bezalel Stern on behalf of the Fur Information Council of America.

<sup>3</sup> We also appreciate the letter we received in favor of Article 28 from Laura Hagen, Massachusetts State Director of Humane Society of the United States, *et al.*

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state law, we have determined that the asserted reasons urging the disapproval of Article 28 do not provide grounds for us to disapprove it.

We emphasize that our approval of the by-law in no way implies any agreement or disagreement with the policy views that led to the passage of the by-law. The Attorney General's limited standard of review requires her to approve or disapprove by-laws based solely on their consistency with state law, not on any policy views she may have on the subject matter or the wisdom of the by-law. Amherst, 398 Mass. at 795-96, 798-99 (requiring inconsistency with state law or the constitution for the Attorney General to disapprove a by-law).

## **I. Summary of Article 28**

Under Article 28 the Town voted to amend the Town's general by-laws to add a new Chapter 53A, "Fur Products," prohibiting the sale of fur products in the Town. The stated purpose of the by-law is to promote community awareness of animal welfare in order to promote a more humane environment in the Town. Section 53A.1, "Purpose and Findings." The by-law defines "fur product" as follows:

Any article of clothing or covering for any part of the body, or any fashion accessory, including, but not limited to, handbags, shoes, slippers, hats, earmuffs, scarves, shawls, gloves, jewelry, keychains, toys or trinkets, and home accessories and decor, that is made in whole or part of fur. "Fur product" does not include any of the following:

- a. A dog or cat fur product, as defined in Section 1308 of Title 19 of the United States Code;
- b. An animal skin or part thereof that is to be converted into leather, or which in processing will have the hair, fleece, or fur fiber completely removed;
- c. Cowhide with the hair attached thereto;
- d. Lambskin or sheepskin with the fleece attached thereto; or
- e. The pelt or skin of any animal that is preserved through taxidermy or for the purpose of taxidermy.

The by-law exempts: (1) used fur products sold by a private party (not including a retail entity), non-profit, or second-hand store; (2) fur products used in the practice of religion; (3) fur products used by a Native American tribe; and (4) fur products authorized by federal and state law from its provisions, and imposes a \$300.00 penalty for violation of its provisions.

## **II. Attorney General's Standard of Review and General Preemption Principles**

Our review of Article 28 is governed by G.L. c. 40, § 32. Pursuant to G.L. c. 40, § 32, the Attorney General has a "limited power of disapproval," and "[i]t is fundamental that every presumption is to be made in favor of the validity of municipal by-laws." Amherst, 398 Mass. at 795-96. The Attorney General does not review the policy arguments for or against the enactment. Id. at 798-99 ("Neither we nor the Attorney General may comment on the wisdom of the town's



by-law.”) Rather, in order to disapprove a by-law (or any portion thereof), the Attorney General must cite an inconsistency between the by-law and the state Constitution or laws. *Id.* at 796. “As a general proposition the cases dealing with the repugnancy or inconsistency of local regulations with State statutes have given considerable latitude to municipalities, requiring a sharp conflict between the local and State provisions before the local regulation has been held invalid.” *Bloom v. Worcester*, 363 Mass. 136, 154 (1973). Massachusetts has the “strongest type of home rule and municipal action is presumed to be valid.” *Connors v. City of Boston*, 430 Mass. 31, 35 (1999) (internal quotations and citations omitted). “The legislative intent to preclude local action must be clear.” *Bloom*, at 155.

Legislative intent to preclude local action can be “either express or inferred.” *St. George Greek Orthodox Cathedral of Western Massachusetts, Inc. v. Fire Dept. of Springfield*, 462 Mass. 120, 125-26 (2012). Local action is precluded in essentially three instances, paralleling the three categories of federal preemption: (1) where the “Legislature has made an explicit indication of its intention in this respect”; (2) where “the State legislative purpose can[not] be achieved in the face of a local by-law on the same subject”; or (3) where “legislation on a subject is so comprehensive that an inference would be justified that the Legislature intended to preempt the field.” *Wendell v. Attorney General*, 394 Mass. 518, 524 (1985). “The existence of legislation on a subject, however, is not necessarily a bar to the enactment of local ordinances and by-laws exercising powers or functions with respect to the same subject[, if] the State legislative purpose can be achieved in the face of a local ordinance or by-law on the same subject[.]” *Bloom*, 363 Mass. at 156; *see Wendell*, 394 Mass. at 527-28 (“It is not the comprehensiveness of legislation alone that makes local regulation inconsistent with a statute. . . . The question . . . is whether the local enactment will clearly frustrate a statutory purpose.”).

General Laws Chapter 40, Section 21 supplements a town’s Home Rule authority through its specific grant of authority to municipalities to adopt certain categories of local legislation, including “[f]or directing and managing their prudential affairs, preserving peace and good order...”. G.L. c. 40, § 21 (1). However, a municipality has no power to adopt a by-law that is “inconsistent with the constitution or laws enacted by the [Legislature]...” Home Rule Amendment, Mass. Const. amend. art. 2, § 6.

### **III. Article 28’s Ban on the Sale of Fur Products Is Not in Conflict with State Law**

#### **A. By-laws Banning Particular Activities Generally**

Towns have used their statutory and home-rule powers to prohibit, within their borders, certain commercial activities that state statutes generally recognize as lawful and that are widely accepted in the remainder of the Commonwealth, for example, coin-operated amusement devices, or self-service gas stations. *Amherst*, 398 Mass. at 798 n.8 (town by-law prohibiting the discharge of firearms within the town limits was not inconsistent the State’s hunting statutes). The Supreme Judicial Court has upheld such by-laws and has overturned the Attorney General’s disapproval of them where they did not create any specific conflict with state law. *Id.*; *see also Milton v. Attorney General*, 372 Mass. 694, 695-96 (1977). “Considerable latitude is given to municipalities in

enacting local by-laws.” Mad Maxine’s Watersports, Inc. v. Harbormaster of Provincetown, 67 Mass. App. Ct. 804, 807 (2006).<sup>4</sup>

B. The Town’s Ban on the Sale of Fur Products is Not Preempted by State Laws Regulating Fur Products

Because Article 28 bans the sale of fur products, we specifically address Article 28’s consistency with several state laws regulating fur products, including, G.L. c. 94, § 227A, c. 131, § 28, and c. 266, § 79. For the reasons provided below, we cannot conclude that Article 28’s ban on the sale of fur products is in conflict with these statutes.

General Laws Chapter 94, Section 227A imposes labeling requirements on natural, dyed or imitation furs, sold at retail within the state. Section 227A also prohibits misrepresentations: (1) as to the place from which the fur or other material came; (2) as to the manufacturer of the article; or (3) as to any other matter. General Laws Chapter 266, Section 79 makes it a crime to sell or exchange manufactured imitation furs as the genuine furs of certain animals. In addition, G.L. c. 131, § 28 requires a license from the Director of Fisheries and Wildlife before a person can purchase or receive the skins or pelts of any fur-bearing mammals from trapper or hunter. While these three statutes regulate the sale of fur products, we determine that they do not constitute state-wide, comprehensive legislation that preempts a local by-law prohibiting the sale of fur products. More specifically, we find nothing in these statutes that explicitly preempts local law or expresses a legislative intent to occupy the field of the sale of fur products so as to preclude town by-laws on the topic.

IV. Conclusion

The by-law’s ban on the sale of fur products is clearly within the Town’s Home Rule and statutory authority. Moreover, we are unable to conclude that the by-law’s ban on fur sales is preempted by or otherwise conflicts with the state statutes regulating the sale of fur products. On these grounds we approve Article 28.

**Note:** Pursuant to G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the Town has first satisfied the posting/publishing requirements of that statute. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) zoning by-laws and amendments are deemed to have taken effect from the date they were approved by the Town Meeting, unless a later effective date is prescribed in the by-law.

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<sup>4</sup> This Office has approved by-laws banning the sale of plastic water bottles; plastic straws; Styrofoam containers; plastic bags; soft drinks; balloons; and alcoholic beverage nips. See, e.g., our decisions to the Concord dated September 5, 2012 (Case # 6273); Rockport dated September 17, 2018 (Case # 9140); Hamilton dated July 27, 2015 (Case # 7516); Marblehead dated August 14, 2014 (Case # 7178); West Tisbury dated October 4, 2019 (Case # 9358); and Nantucket dated August 5, 2015 (Case # 7525); Falmouth dated March 21, 2021 (Case # 9915), respectively.



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